1969 மார்ச் 5]

## APPENDIX I.

[*Vide* Answer to Unstarred Question No. 3 on page 22]

Press Release No. 433. Dated : 2nd December 1967.

### GOVERNMENT SERVANTS' CONDUCT RULES

Rule 4 of the Supplementary Rules to the Madras Government Servants' Conduct Rules, 1960, clearly states that "no Government servant shall make representations to Ministers direct or send direct to Ministers advance copies of such representations made by him to the Government through the proper official channel". Rule 18 of the Madras Government Servants' Conduct Rules prohibits Government servants from bringing "Any political or other outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government". But there have been some instances where pressure has been brought to bear on Ministers by Government servants for securing personal benefits such as a transfer or avoidance of a transfer. Such a practice is not only against the rules but also undermines the morale of Government servants. Government, are, therefore, keen to put an end to this practice. In all cases, where Government servants have grievances, written representations could be made to the appropriate authorities through the immediate official superiors.

Government reiterates that bringing pressure to bear on Ministers and superior authorities will constitute a violation of the Conduct Rules. Government also informs all Heads of Departments and their subordinates that disciplinary action is proposed to be initiated in future in such cases of violation.

செய்தி வெளியிடு: 433 டிசம்பர் 2, 1967.

### அரசு ஊழியர் ஒழுங்கு நடத்தை

அமைச்சர்களை நேரடியாக அணுகக் கூடாது.

அரசு ஊழியர் யாரும் அமைச்சர்களிடம் நேரடியாக முறையிடவோ' அல்லது அரசுக்கு முறைப்படி அனுப்பும் கோரிக்கைகளின் நகல்களை அமைச்சர்களுக்கு முன்னதாக அனுப்பவோ கூடாது, என்று, 1960-ம் ஆண்டு, தமிழக அரசு ஊழியர்களின் ஒழுங்கு நடத்தை விதிமுறைகளுக்கான துணை விதிகளின் 4-வது விதி தெளிவாகக் கூறுகிறது. அரசு ஊழியர்கள் தங்களது வேலை சம்பந்தமாகத் தங்களது கோரிக்கைகளை விரைவுபடுத்துவதற்காக, எந்த மேல் அதிகாரிகளின் மீதும் அரசியல் அல்லது வெளியார் செல்வாக்கைக் கொண்டு வருவதை, தமிழக அரசு ஊழியர்களின் ஒழுங்கு நடத்தை விதிமுறைகளின் 18-வது விதி தடை செய்கிறது. இருந்தபோதிலும், அரசு ஊழியர்கள் வேலை மாற்றம் பெறுவது அல்லது வேலை மாற்றத்தைத் தவிர்ப்பது போன்ற நன்மைகளைச் சாதித்துக் கொள்வதற்காக, அமைச்சர்களிடம் சிபாரிசு கொண்டுவரும் சில நிகழ்ச்சிகள் நடந்திருக்கின்றன. இம்மாதிரி செயல் விதிமுறைகளுக்கு முரணானது மட்டுமின்றி, அரசு ஊழியர்களின் ஒழுக்கத்தையே சீர் குலைப்பதாகும். எனவே, இந்தப் பழக்கத்திற்கு முற்றுப்புள்ளி வைத்தாக வேண்டும் என்று அரசு கருதுகிறது. அரசு ஊழியர்களுக்குக் குறைகள் இருக்கக்கூடிய எல்லா விஷயங்களிலும், அடுத்துள்ள மேல் அதிகாரிகள் மூலம் உரிய அதிகாரிகளுக்கு எழுத்து மூலமாக முறையீடு செய்து கொள்ளலாம்.

அமைச்சர்களுக்கோ, அல்லது மேல் அதிகாரிகளுக்கோ சிபாரிசுகள் கொண்டு வருவது, ஒழுங்கு விதிமுறைகளை மீறுவதாகும் என்பதை அரசு வலியுறுத்த விரும்புகிறது. எதிர்காலத்தில் இப்படி மீறப்படும் சந்தர்ப்பங்களில் ஒழுங்கு நடவடிக்கை எடுக்கப்படும் என்று எல்லாத் துறைகளின் தலைவர்களுக்கும், அவர்களது சார்நிலைத் துறையினருக்கும் அரசு தெரிவிக்கிறது.

## APPENDIX II.

[*Vide* Answer to Unstarred Question No. 9 on page 25]

[*Subject.*—Elections—Payments from discretionary grant on the eve of elections—Instructions of Election Commission]

### ELECTION COMMISSION OF INDIA

Talkatora Road,
New Delhi-1.
Dated the 25th June 1968
[Ashadha 4, 1890 (Saka).]

**No. 82/HN/24/67.**

To

All the Ministries of the Government of India.

The Chief Secretaries to the Governments of all the States/All Union Territories Administration.

*Subject*—Payments from discretionary funds on the eve of elections.

Sir,

I am directed to enclose a copy of the relevant extracts from the Judgment of the Supreme Court in Civil Appeal No. 1632 (NCE) of 1967 against the order of the High Court for the States of Punjab and Haryana in Election Petition No. 24 of 1967 and to state that in the interest of purity of elections the Commission is in respectful agreement with the views expressed by the Supreme Court that the distribution of money from the discretionary grants on the eve of an election should be avoided. Although such disbursement may be for the general public good, it is an evil practice even if it may not be a corrupt practice. The Court has observed that "the dividing line between an evil practice and corrupt practice is a very thin one". It should be understood that the energy to do public good should be used not on the eve of elections but much earlier and that even slight evidence might change this evil practice into corrupt practice".

2. Similar pronouncements have been made by the Courts in certain other cases also. The relevant extracts from the judgments are reproduced below :

(a) *Shri Khader Sheriff* v. *Munuswami Gounder* (1955) *Supreme Court.*—" T " has been frequently pointed out that while it is meritorious to make a donation for charitable purposes, if that is made at the time or on the eve of an election, it is open to the charge that its real object was to induce the electors to vote in favour of the particular candidate ".

(b) In the *Wigan Case* (2 O'M & H) Justice Bowen J., one of the most noted Judges of England in the second half of the nineteenth century had observed : " In the second place, I wish to answer the suggestion that this was merely charity. Charity at election times ought to be kept by politicians in the background. No doubt the distress was great in Wigan at this time, and there was probably many a fireless and breadless house throughout the town; but the persons who ought to have relieved the distress were not politicians of Wigan; they ought to have stood aloof; they had another duty to discharge on that day and they could not properly discharge both duties at the same time, in truth, I think, it will generally be found that the feeling which distributes relief to the poor at the election time, though those who were the distributors may not be of aware of it, is really not charity, but party feeling following in the steps of charity, wearing the dress of charity, and mimicking her gait ".

3. While in the interest of the general good of the public it may be necessary to place discretionary grants at the disposal of the Ministers. Certain restrictions should be imposed, either by providing in the rules governing the disbursement of the grants or otherwise, that payments out of the discretionary grants should not be made when a countrywide general election, or a mid-term general election or even a bye-election is in prospect; and in any case it should not be made after the notification calling any such election is issued. The rules may also require that the benefits are, as far as possible, uniformally distributed within the State and not utilised in a particular district or constitutency alone.

4. The Commission desires that in the interest of fair and free elections certain healthy conventions should be introduced and if necessary changes should also be made in the rules regulating the distribution of discretionary grants by Ministers so that no disbursement or promise of disbursement from the grant is made on the eve of an election. I am, therefore, to request that the observations made by the Supreme Court and the High Court of Punjab and Haryana may be brought to the notice of the authorities concerned for such action as may be considered necessary.

The receipt of this letter may kindly be acknowledged.

Yours faithfully,

(Signed) K. S. RAJAGOPALAN,

***Secretary to the Election Commission.***

*Extracts*

## IN THE SUPREME COURT OF INDIA
(Civil Appellate Jurisdiction)

*Civil Appeal No.* 1632 *of* 1967.

Ghasi Ram ... ... ... ... Appellant

*versus*

Dal Singh and Others ... ... ... Respondents

Judgment

* * * * * *

* * * * * *

Under the first head of charges it is stated that he promised a payment of Rs. 20,000 to the Gram Panchayat, Igra; Rs. 5,000 on February 15, 1967 for a sacred tank in village Ram Rai; Rs. 1,000 on January 9, 1967 to the Gram Panchayat, Bahmanwas; Rs. 2,500 in December 1966 to the Gram Panchayat, Bibipur and Rs. 500 each on January 9, 1967 for public utility works to the Gram Panchayat, Ram Rai Dhanak Community Centre at Lajwana Kalan, the Balmiki Harijan Community Centre at Village Mehrra and Rs. 500 for the repair of a Harijan Well and Lajwana Khurd. It is said that before these grants were made the Minister visited these several villages and the voters told him that they were not going to vote for him as he had done nothing for their uplift and on his promising the said sums the voters were won over with the result that the answering respondent secured the bulk of the vote from these villages. The High Court carefully considered the evidence led to prove these allegations and came to the conclusion that it fell short of the requirements of S. 123 of the Act. It is contended before us that the High Court was in error in reaching this conclusion both in point of fact and in point of law. We shall first dispose of the facts before proceeding to examine what we consider to be the corrupt practice in this context.

The donation to the Gram Panchayat, Igra is attempted to be proved through the evidence of one Mehtab Singh (P.W. 10). He stated that the answering respondent, as Chairman of Block Samiti had promised Rs. 5,000, but had not paid it. When he came for canvassing, the voters were unwilling to vote for him because he had not kept his promise. He then persuaded them and promised to pay some money if they gave him their support. The High Court pointed out that this witness was a discharged Sub-Inspector and the Polling Agent of the election petitioner. He was found to be telling lies when he said that the amount was received seven days after the promise, because the record clearly showed that this money was paid only in March 1967 more than a month after the poll. Lakhi Ram (P.W. 5) admitted that there was a village school which was lying incomplete and money was needed for its completion. It will be noticed that this money was not paid directly to any voter or voters. It was handed over to the

Gram Panchayat for utilization. This meant that it would have gone to the benefit of those who were going to support the answering respondent and also those who were opposed to him. The High Court did not believe the evidence that there was any bargain for votes as required by the definition of corrupt practice. On a reading of the evidence we are satisfied that the village community asked him for help and the answering respondent promised to help them to complete works of public utility. The amount was paid after the election was over.

Similarly, the sum of Rs. 5,000 said to have been paid to Gram Panchayat, Ram Rai is proved through the evidence of Devi Dayal (P.W. 11) and Mangal Singh (P.W. 12). This money was sanctioned on December 8, 1966 even before the Congress had given ticket to the answering respondent. The evidence here also does not show that there was any bargain for votes. The two witnesses were proved to be hostile to the answering respondent. Devi Dayal was his rival candidate in 1952 and had made several applications against the answering respondent. The application for the Congress ticket was made by the answering respondent on December 6, 1966 and the grant being made on December 8, 1966, the evidence of Devi Dayal that the grant was after the nomination was definitely false. Mangal Singh is the editor of weekly journal, which published several complaints against the answering respondent. The answering respondent stated that he had collected Rs. 25,000 for the sacred tank even before he became Minister, that through his efforts a pucca road, a dispensary, a veterinary hospital a post office and water works were established. He had also got a primary school upgraded. Ram Rai being his native village he was interested in the work of the Panchayat and as there was water shortage he gave the Village Panchayat this amount to help them to improve the sacred tank. The High Court did not find any evidence which would bring the matter within S. 123. It declined to believe these hostile witnesses and on a consideration of the evidence were not satisfied that the conclusion was erroneous.

The sum of Rs. 1,000 was paid to the Gram Panchayat, Bahmanwas for a primary school. This was a month or a month and quarter before the election. This was sought to be proved through Ram Dutt (P.W. 20). It is in evidence that Ram Dutt was very friendly with the election petitioner and even gave his truck for the use of the petitioner. Evidence further shows that the school building was without a roof for some time and the children used to sit under trees. We are satisfied that this amount cannot be described as a bribe.

There was no evidence to prove the payment of Rs. 2,500 to Bibipur and as none was brought to our notice this point was rightly decided against the election petitioner.

The four sums of Rs. 500 each were paid for improvement of Community Centres. The attempt to prove that they were a part of the bargain was discountenanced by the High Court.

In respect of the amount paid to Lajwana Kalan the evidence was that of Ram Singh (P.W. 13), the polling agent of the election petitioner, Shri Pula (P.W. 14), whose demeanour was commented upon by the learned Judge, and one of the candidates Mangeram (P.W. 19) and Jailal (P.W. 21), a helper of one other candidate. Their evidence was found to be unsatisfactory either because of the interest in themselves or in other candidates or because of internal discrepancies and defects. We have read the evidence and we see no reason to differ. In support of the other two payments of Rs. 500 each, the only objection raised before us was that the payments were made to the Dhanak and the Balmiki Communities with a view to obtaining their votes because, it was contended that there was no Community Centre at these villages. Eveidence, however, shows that there are Paras at these villages where the Harijan Community meets. In fact, in the petition and the evidence these are referred to as Community Centres. This action of the answering respondent was not found to amount to a corrupt practice and on a consideration of the evidence we are in agreement with the High Court.

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In our opinion the law requires that a corrupt practice involving bribery must be fully established. The evidence must show clearly that promise of gift directly or indirectly was made to an elector vote or refrain from voting at an election. The position of a Minister is difficult. It is obvious that he cannot cease to function when his election is due. He must of necessity attend to the grievences. Otherwise he must fall. He must improve the image of his administration before the public. If everyone of his official acts done bonafide is to be construed against him and an ulterior motive is spelled out of them, the administration must necessarily come to a stand-still. The State of Haryana came into existence on November 1, 1966. With an election in the near future, the political party had to do acts of a public nature. The grant of discretionary grants were part of the general scheme to better community development projects and to remove the immediate grievances of the public. The money was required to be spent in about three months' time. The sanction of the Minister had often the concurrence and recommendation of his subordinate staff. It is for this reason that the orders about the improvement of the supply of water were not pressed. They were incapable of being construed against the first respondent. Therefore, emphasis was placed upon the distribution of money. The money was not distributed among the voters directly but was given to Panchayats and the public at large. It was to be used for the good of those for and those against the candidate. No doubt they had the effect of pushing forward his claims but that was inevitable even if no money was spent but good administration changed the People's condition. We cannot, therefore, hold that there was any corrupt practice. If there was good evidence that the Minister bargained directly or indirectly for votes, the result might have been different but there was no such evidence.

Although we have held in this case that the action of the first respondent cannot be characterised as not innocent, we are constrained to say that the attitude of Government is far from laudable. Elecion is something which must be conducted fairly. To arrange to spend money on the eve of elections in different constituencies, although for general public good, is when all is said and done an evil practice, even if it may not be corrupt practice. The dividing line between an evil practice and a corrupt practice is a very thin one. It should be understood that energy to do public good should be used not on the eve of elections but much earlier and that even slight evidence might change this evil practice into corrupt practice. Payments from discretionary grants on the eve of elections should be avoided.

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(Signed) M. Hidayatullah, J.
(Signed) H. S. Hedge, J.

தமிழ்நாடு சட்டமன்றப் பேரவை
TAMIL NADU LEGISLATIVE ASSEMBLY
வாய்மையே வெல்லும்
TRUTH ALONE TRIUMPHS